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NG CHIANG CHONG v. NG CHENG HOCK & ORS

HIGH COURT MALAYA, GEORGETOWN
ANAND PONNUDURAI J
[ORIGINATING SUMMONS NO: PA-24NCC-38-12-2022]
3 MAY 2024

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Abstract – *An intention to withdraw and discontinue proceedings of a current suit in light of the filing of a new suit does not amount to an abuse of the court process if it can be shown that the new suit encompasses many more issues, and that the current suit is not at such an advanced stage as to not permit its discontinuance. An application to discontinue a suit ought to be allowed when it can avoid conflicting decisions and avoid a multiplicity of proceedings.*

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CIVIL PROCEDURE: *Suit – Withdrawal of – Application to discontinue proceedings – Filing of new, broader suit – Whether plaintiff or defendant dominus litis – Whether current proceedings at advanced stage – Whether present application or new suit abuse of court process – Whether parties prejudiced by discontinuance of proceedings – Whether discontinuation of suit would avoid conflicting decisions and avoid duplicity – Rules of Court 2012, O. 21 r. 3(1)*

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The plaintiff commenced these proceedings against the defendants pursuant to ss. 346 and 351 of the Companies Act 2016 ('Companies Act') claiming oppression as a minority shareholder in the fourth defendant. The plaintiff's claim was opposed and parties exchanged several affidavits thereafter. Subsequently, the plaintiff discharged his solicitors and a Suit 192 was filed by another set of solicitors on behalf of the plaintiff. At the case management, the plaintiff informed the court of the plaintiff's intention to withdraw and discontinue this originating summons against the defendants in light of the filing of Suit 192. The defendants informed that they objected to such withdrawal. The plaintiff was directed to file a formal application and thereafter, encl. 57 was filed by the plaintiff and affidavits were exchanged on the same. The plaintiff submitted that the crux of the application to discontinue these proceedings was that Suit 192, which had since been filed, was a much broader suit which also encompassed some of the issues raised in the present proceedings. As such, it was contended that the discontinuance of this suit would avoid conflicting decisions, save costs and avoid duplicity. The defendants, however, argued, *inter alia*, that they had become *dominus litis* and had also gained a significant advantage that it would be unjust to deprive them of the same by allowing the withdrawal of the originating summons and that Suit 192 was an abuse of the court process. The issues that arose were: (i) whether the plaintiff was no longer *dominus litis* and/or was the defendant now *dominus litis*; (ii) were the current proceedings at an advanced stage; (iii) was this application or Suit 192 an abuse of the court process; and (iv) whether the multiplicity of proceedings were self-induced.

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Held (allowing encl. 57):

(1) Pursuant to O. 21 r. 3(1) of the Rules of Court 2012 ('ROC'), a court is conferred with a discretionary power when faced with an application to discontinue and the court may order that the action be discontinued on any terms as to costs and other terms the court thinks just. (para 19)

(2) Whilst these proceedings were against the three defendants based on a complaint of minority oppression and seeking remedies premised on s. 346 of the Companies Act, Suit 192 was a much broader suit in many respects, *inter alia*: (i) there were six other plaintiffs apart from the plaintiff herein and there were 37 defendants which included the three defendants herein; (ii) a conspiracy, collusion between the defendants, *inter alia*, in using the companies' funds to generate additional cash to their own pockets; (iii) misrepresentation, fraud, and breach of family partnership agreement/arrangement/settlement; and (iv) lifting the corporate veil. Suit 192 was also fixed before this court and the same was currently being managed with a whole host of interlocutory applications filed therein which need to be disposed prior to fixing any trial dates. There were no applications in Suit 192 to strike it out pursuant to O. 18 r. 19 of the ROC and as such, it was likely that Suit 192 would proceed to trial and all those issues as pleaded would have to be decided upon. (paras 24 & 25)

(3) It was premature for the defendants to contend that they had gained a significant advantage purely on the basis of the oral testimony of the plaintiff under cross-examination so far. The plaintiff had yet to be re-examined and there was still the examination of the defendants which was yet to be done. As such, without going into the details of the evidence of the plaintiffs so far under cross-examination, since the totality of the evidence has not been completed, it could not be ascertained and/or concluded that the defendants were *dominus litis*. As such, the defendants were not *dominus litis* nor were the defendants prejudiced by the discontinuance of these proceedings. (paras 28-30)

(4) Whilst there was no dispute that the case had progressed, it had not progressed to such an advanced stage so as to not permit its discontinuance now. The plaintiff himself had yet to complete his evidence and any of the defendants have yet to testify so far and as such, it could not be ascertained what other evidence may be revealed. The plaintiff was not escaping by any side door and/or avoiding any contest as such contest was most certainly still on but such contest would be in Suit 192 instead. (paras 33-35)

(5) The filing of Suit 192 or the current encl. 57 did not amount to an abuse of court process or an attempt by the plaintiff to obtain a collateral advantage. It was not a case of the plaintiff attempting to improve his position but rather a suit with many more parties encompassing many

more issues than the narrow issue of minority oppression of this suit. Whilst there certainly appeared to be an overlap of facts in the two cases, there was merit in the plaintiff's contention that this suit ought to be properly discontinued to allow each and every issue in Suit 192 to be ventilated fully to avoid any multiplicity. Bearing in mind that there would be multiplicity, even if it was induced by the plaintiff, the plaintiff should be allowed to discontinue these proceedings to avoid such multiplicity. (paras 40-42)

(6) The defendants contended that they have had to spend considerable time defending these proceedings to date incurring time, money and energy and sought a sum of RM200,000 as costs if the court was minded to allow the discontinuance. Bearing in mind that this was an originating summons based on affidavits as well as there had only been a half-day proceeding when the plaintiff was cross-examined as well as there being no order of costs in favour of the defendants in these proceedings so far, the sum of RM200,000 was exorbitant and would be punitive. Thus, the sum of RM30,000 would be reasonable to be awarded as costs against the plaintiff. (paras 44 & 45)

Case(s) referred to:
Fox v. Star Newspaper Company [1898] 1 QB 636 ***(refd)***
Majlis Peguam Malaysia & Ors v. Raja Segaran S Krishnan [2002] 3 CLJ 370 CA ***(refd)***
Overseas Union Finance Ltd v. Lim Joo Chong [1971] CLJU 101; [1971] 1 LNS 101 HC ***(refd)***

Legislation referred to:
Companies Act 2016, ss. 346, 351
Contracts Act 1950, s. 16
Rules of Court 2012, O. 18 r. 19, O. 21 r. 3(1), O. 92 r. 4

For the plaintiff - John Khoo & Nurul Alia; M/s Ismail, Khoo & Assocs
For the defendants - YC Wong, Lee Khe Wei & Wan Hsiek Eam; M/s YC Wong

Reported by Suhainah Wahiduddin

JUDGMENT

Anand Ponnudurai J:

Introduction

[1] These proceedings were commenced by the plaintiff pursuant to s. 346 of the Companies Act 2016, claiming that he was oppressed as a minority shareholder of the fourth defendant. Through the said originating summons, the plaintiff, *inter alia,* sought a declaration that the first to third defendants had conducted the affairs of the fourth defendant in disregard of the plaintiff's interest as a minority shareholder and prayed for an order that the first to third defendants purchase his shares in the fourth defendant for fair value failing which the fourth defendant be wound up.

[2] However midway through these proceedings and upon changing his solicitors and after filing another suit *vide* PA-22NCVC-192-12-2023 (hereinafter referred to as "Suit 192"), the plaintiff then filed encl. 57 herein, which is an application pursuant to O. 21 r. 3 and/or O. 92 r. 4 of the Rules of Court 2012 (hereinafter referred to as "ROC 2012") to discontinue these proceedings in light of the filing of Suit 192.

[3] The defendants objected to the plaintiff's application in encl. 57 to discontinue these proceedings.

[4] Having heard parties submit on 26 March 2024, I allowed encl. 57 *ie*, the discontinuance of the current proceedings against the defendants with costs to be paid by the plaintiff to the defendants. The defendants have since filed an appeal against my decision allowing encl. 57 and as such, I will hereinbelow set out the salient background facts, the parties' respective contentions and the reasons for my allowing the said application to discontinue these proceedings.

Salient Background Facts

[5] The salient background facts can be summarised as follows.

[6] On 30 December 2022, the plaintiff commenced these present proceedings against the defendants pursuant to ss. 346 and 351 of the Companies Act 2016, claiming oppression as a minority shareholder in the fourth defendant.

[7] The plaintiff's claim was opposed and the parties exchanged several affidavits thereafter.

[8] The plaintiff had also filed two applications for injunctions against the defendants *vide* encls. 3 and 22. However, the plaintiff thereafter withdrew encl. 22 on 17 April 2023 and also withdrew encl. 3 on 18 July 2023 and I therefore struck out both enclosures on those dates with no order as to costs.

[9] On 18 July 2023, learned counsel for both parties informed the court of their intention to cross-examine the deponents of the affidavits that have been filed so far as there appeared to be some disputes for which oral testimony was required. As such, I directed that the matter be fixed for hearing on 3 October 2023 for the cross-examination of the plaintiff and the deponents of the affidavits filed by the defendants. In this regard, learned counsel for both parties agreed that the cross-examination would be restricted to the following two issues, which required judicial determination at the end of the day and these were (i) whether there exists a legitimate expectation of the plaintiff to remain as a director; and (ii) whether there was a breach of fiduciary duty on the part of the plaintiff.

[10] On 3 October 2023, the matter proceeded and the plaintiff was cross-examined in relation to the affidavits affirmed by him in encls. 2, 9, 10 and 13.

[11] However, the re-examination of the plaintiff could not commence on the said date due to lack of time and the matter was adjourned to 5 December 2023 for continued hearing for the re-examination of the plaintiff and the cross-examination of the defendants' witnesses/deponents of affidavits.

[12] On 5 December 2023, the plaintiff was not present in court, citing health issues as he was unwell. Learned counsel for the plaintiff had also, on 5 December 2023 indicated that the plaintiff intended to discharge him as solicitors and a notice of change of solicitors would be filed shortly. On the same date, it was brought to my attention that Suit 192 was filed on 1 December 2023 by another set of solicitors on behalf of the plaintiff, namely Messrs Ismail, Khoo & Associates. Learned counsel for the defendants had no objections to adjourn the hearing on 5 December 2023, whereupon I fixed the matter for case management on 4 January 2024 for the plaintiff to update on the change of solicitors and for parties to revert on the status of these proceedings in light of the filing of Suit 192.

[13] On 6 December 2023, *vide* a notice of change of solicitors, the plaintiff appointed Messrs Ismail, Khoo and Associates in place of Messrs Rajen & Associates as his solicitors.

[14] At the case management on 4 January 2024, learned counsel for the plaintiff informed the court of the plaintiff's intention to withdraw and discontinue this present originating summons against the defendants in light of the filing of Suit 192. Learned counsel for the defendants informed that they objected to such withdrawal and I thus directed the plaintiff to file a formal application and gave directions on the filing of affidavits and written submissions. The plaintiff thereafter filed encl. 57 and affidavits were exchanged on the same.

[15] Having heard learned counsel for both parties submit on 26 March 2024 on encl. 57, I allowed the plaintiff's application to discontinue these proceedings without liberty to the plaintiff to file any similar application pursuant to s. 346 of the Companies Act 2016. I have also expressly ordered/directed that all evidence adduced in this present originating summons, including that of the oral testimony of the plaintiff on 3 October 2023, may be used and relied upon by the defendants in Suit 192 or any other proceedings. I also ordered the plaintiff to pay the defendants costs of RM30,000 for these proceedings.

[16] I will now set out the parties' respective contentions and reasons for my decision.

The Parties' Respective Contentions/Submissions

The Plaintiff's Contentions/Submissions

[17] The plaintiff's contentions/submissions in supporting this present application are summarised as follows:

(i) that the crux of the plaintiff's application to discontinue these present proceedings is that Suit 192, which has since been filed, is a much broader suit which also encompasses some of the issues raised in the present proceedings. As such, it is contended that the discontinuance of these suits will avoid conflicting decisions, save costs and avoid duplicity;

(ii) that the present proceedings have yet to reach an advanced stage; and

(iii) that the defendants have yet to gain any interlocutory advantages up to date.

The Defendants' Contentions/Submissions

[18] The defendants' contentions/submissions in opposing this present application are summarised as follows:

(i) that the plaintiff is no longer *dominus litis,* especially in light of their contention that learned counsel for the defendants had extracted several admissions from the plaintiff during his cross-examination, which had damaged the plaintiff's case;

(ii) that the defendants have become *dominus litis* and have also gained a significant advantage that it would be unjust to deprive them of the same by allowing the withdrawal of the originating summons;

(iii) that the present originating summons is at an advanced stage;

(iv) that the cross-examination of the plaintiff had completed;

(v) that the plaintiff had gained interlocutory advantages and the defendants have suffered losses having to defend the interlocutory injunction applications filed as well as satisfying the queries from the banks so that their banking facilities are not affected;

(vi) that Suit 192 is an abuse of the court process;

(vii) that this present application was filed in light of the plaintiff having filed Suit 192, which is an improvement of the present originating summons, thereby allowing the plaintiff to obtain "a second bite of the cherry"; and

(viii) that the allegation of multiplicity of proceedings are self-induced and the plaintiff should not be allowed to benefit from his own wrong, which prejudices the defendants.

Analysis

[19] There is no dispute that pursuant to O. 21 r. 3(1) of the ROC 2012, a court is conferred with a discretionary power when faced with an application to discontinue and the court may order that the action to be discontinued on any terms as to costs and other terms the court thinks just.

[20] Order 21 r. 3 of the ROC 2012 provides as follows:

> Discontinuance of action with leave (O. 21, r. 3)
>
> 3.(1) Except as provided by rule 2, a party may not discontinue an action (whether begun by writ or otherwise) or counterclaim, or withdraw any particular claim made by him therein, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.
>
> (2) An application for leave under this rule shall be made by a notice of application.

[21] In *Majlis Peguam Malaysia & Ors v. Raja Segaran S Krishnan* [2002] 3 CLJ 370; [2002] 3 MLJ 155, the Court of Appeal provided some guidelines to courts when faced with an application to discontinue where it enunciated as follows:

> One of these guidelines is that if a defendant is *dominus litis*, the general rule is to refuse leave to discontinue. See *Overseas Union Finance Ltd v. Lim Joo Chong* [1971] 2 MLJ 124. Another guideline is that where the case is at a very advanced stage, care should be taken not to permit discontinuance. And what constitutes an advanced stage depends on the facts and circumstances of each case as illustrated by the case of *Fox v. Star Newspaper Company* [1898] 1 QB 636. Another consideration; yet another guideline; which a judge ought to bear in mind is any interim or interlocutory advantage that the plaintiff may have gained between the date of issue of the writ and the point of time which he seeks to discontinue: *O'Neal v. Mann* [2000] FCA 1680.

[22] In my opinion, the issues that required consideration when deciding the plaintiff's application herein are as follows:

(i) is the plaintiff no longer *dominus litis* and/or is the defendant now *dominus litis*?

(ii) are the current proceedings at an advanced stage?

(iii) is this present application or Suit 192 an abuse of court process? and

(iv) is the multiplicity of proceedings self-induced?

[23] I will now consider the above matters, which have to be considered based on the particular facts and circumstances of this case.

[24] In furtherance of the same, I have firstly noted that whilst these proceedings were against the three defendants based on a complaint of minority oppression and seeking remedies premised on s. 346 of the Companies Act 2016, Suit 192 was a much broader suit in many respects, as follows:

(i) that there were six other plaintiffs apart from the plaintiff herein;

(ii) that there were 37 defendants, which included the three defendants herein;

(iii) that the plaintiff's claim was for a sum of RM125 million and for various defendant companies to be placed under receivership;

(iv) undue influence and dominion over the will of the late Ng Cheng Guan and the transfer of shares is null and void pursuant to s. 16 of the Contracts Act 1950;

(v) conspiracy, collusion between the defendant *inter alia,* in using the companies' fund to generate additional cash to their own pockets;

(vi) conflict of interest;

(vii) collusion, conspiracy, or *mala fide*, fraud and misconduct of the lawyers in the transactions;

(viii) a claim of asset stripping and/or misappropriation and the removal of the plaintiff from the defendant companies;

(ix) the incorporation of the defendants as conduit pipe to divert or redirect or misappropriate the company funds;

(x) breach of promise and breach of trust;

(xi) misrepresentation, fraud, and breach of family partnership agreement/arrangement/settlement;

(xii) lifting the veil of incorporation; and

(xiii) constructive trust and/or remedial constructive trust.

[25] Suit 192 is also fixed before me and the same is currently being managed by me with a whole host of interlocutory applications filed therein which need to be disposed of prior to fixing any trial dates. However, it is to be noted that there are no applications in Suit 192 to strike it out pursuant to O. 18 r. 19 of the ROC 2012 and as such, it is likely that Suit 192 would proceed to trial and all those issues as pleaded will have to be decided upon.

Issue No 1: Is The Plaintiff No Longer Dominus Litis And/Or Is The Defendant Now Dominus Litis?

[26] It is trite law that if the plaintiff is no longer *dominus litis* or where the defendant has gained an upper hand or an advantage, the party should not be deprived of that advantage and leave to discontinue should not be granted. In the case of *Overseas Union Finance Ltd v. Lim Joo Chong* [1971] CLJU 101; [1971] 1 LNS 101; [1971] 2 MLJ 124, it was held as follows:

> If the applicant here is *dominis litis* then leave to discontinue may be granted. If he is not, then it is unlikely that I would grant him leave to discontinue I do not think that the applicant is wholly *dominis litis*. He cannot dispose of the case as he thinks fit or allow it to be dismissed or let judgment go by default. The parties have come to a stage where the respondent/chargor has gained an upper hand by an advantage in that he could find flaws in the applicant/chargee's allegations namely the wrong dates in the memorandum *etc*. and the fact that the reason for wanting a discontinuance is not a very strong one. The respondent/chargor is not to be deprived of these advantages which have made him a well-matched adversary in the arena.

[27] The defendants contend that the plaintiff is no longer *dominus litis* on the basis that learned counsel for the defendants allegedly managed to extract concessions or to show weaknesses in the plaintiff's case during his cross-examination on 3 October 2023. These concessions, it is contended, relate to the plaintiff's position (or rather an inconsistent position as submitted by the defendants) in relation to his legitimate expectation to remain as director of the fourth defendant. It is also contended that the plaintiff had allegedly contradicted himself when giving evidence, which affected his credibility as a witness. As such, it is submitted that it is in fact the defendants who have become *dominus litis* by having gained a significant advantage.

[28] In my considered view, it is indeed premature for the defendants to contend that they have gained a significant advantage purely on the basis of the oral testimony of the plaintiff under cross-examination so far. As seen earlier, the plaintiff has yet to be re-examined and there is still the examination of the defendants which is yet to be done. As such, without going into the details of the evidence of the plaintiffs so far under cross-examination, since the totality of the evidence have not completed, it cannot be ascertained and/or concluded that the defendants are *dominus litis*.

[29] However, I indicated to learned counsel for the defendants that if indeed the plaintiff herein had contradicted himself or had in fact given evidence favourable to the defendants, then it was open to the defendants to use the notes of proceedings in this suit in any other suit including Suit 192 and that I would make such an order.

[30] As such, I find that the defendants are not *dominus litis* as contended, nor are the defendants prejudiced by the discontinuance of these proceedings.

Issue No 2: Are The Current Proceedings At An Advanced Stage?

[31] As seen in the case of *Majlis Peguam Malaysia* (*supra*), another guideline to consider when considering an application to discontinue proceedings is the fact of whether or not a case is at a very advanced stage.

[32] In the case of *Fox v. Star Newspaper Company* [1898] 1 QB 636, it was held as follows:

> The principle of the rule is plain. It is that after the proceedings have reached a certain stage the plaintiff, who has brought his adversary into court, shall not be able to escape by a side door and avoid the contest. He is then to be no longer *dominus litis*, and it is for the judge to say whether the action shall be discontinued or not and upon what terms. I think it would be a great error to construe the rule by reference to the old meaning of the term "discontinuance" or any mere technical sense of words. The substance of the provision is that, after a stage of the action has been reached at which the adversaries are meeting face to face, it shall only be in the discretion of the judge whether the plaintiff shall be allowed to withdraw from the action so as to retain the right of bringing another action for the same subject-matter.

[33] In this regard, the defendants contend that bearing in mind that the cross-examination of the plaintiff has completed, the suit has reached an advanced stage and as such, encl. 57 ought to be dismissed and the examination of other deponents should continue. With respect, I disagree. If all the oral evidence had been completed, that might possibly be a different matter. However, as seen above, the plaintiff himself has yet to complete his evidence and any of the defendants have yet to testify so far and as such, it cannot be ascertained what other evidence may be revealed.

[34] As such, in my considered view, whilst there is no dispute that the case has progressed, I am certainly unable to conclude that it has progressed to such an advanced stage so as to not permit its discontinuance now.

[35] Furthermore, as seen from the case of *Fox* (*supra*), the rule is to avoid a party to escape by a side door to avoid a contest. In my view, the plaintiff is not escaping by any side door and/or avoiding any contest as such contest is most certainly still on but such contest will be in Suit 192 instead.

Suit 192

[36] This then leads me to the issue of filing of Suit 192 and whether it constitutes an abuse of the court process with the defendants contending that the plaintiff is being allowed the proverbial "second bite of the cherry".

[37] As highlighted earlier, Suit 192 is definitely a much broader suit encompassing many other issue which involves many other parties which also seek different reliefs.

[38] The defendants further contend that Suit 192 was filed to improve his claim, which includes raising new issue, and that the said suit was filed because the flaws in this originating summons have been exposed. With respect, I find no merits in this contention.

[39] Firstly, this suit is filed purely pursuant to s. 346 of the Companies Act 2016 contending minority oppression. I do not see how the various pleaded causes of action in Suit 192 are linked to the testimony of the plaintiff on 3 October 2023. Another factor to consider is the fact that Suit 192 was filed by different solicitors and not the plaintiff's solicitors herein.

[40] I am certainly not persuaded that the filing of Suit 192 or the current encl. 57 amounted to an abuse of court process or an attempt by the plaintiff to obtain a collateral advantage. I am similarly not persuaded that Suit 192 was the plaintiff's attempt to improve his position and launch a fresh attack using a different approach and thereby abandoning his allegedly previous weak position herein as submitted by the defendants.

[41] In my view, having perused the plaintiff's pleaded case in Suit 192, it is not a case of the plaintiff attempting to improve his position but rather a suit with many more parties encompassing many more issues than the narrow issue of minority oppression of this suit. In my opinion, whilst there certainly appears to be an overlap of facts in the two cases, I find merit in the plaintiff's contention that this suit ought to be properly discontinued to allow each and every issue in Suit 192 to be ventilated fully to avoid any multiplicity.

[42] In relation to the issue of multiplicity, it appears that the defendants do not dispute the fact that there will be some multiplicity. The defendants however contend that such multiplicity was self-induced by the plaintiff with the filing of Suit 192 and he should not be allowed to benefit from his own wrong. In my opinion, I am not sure what is the alleged wrong that the plaintiff is said to benefit from but as indicated earlier, neither Suit 192 nor this present application was an abuse of the court process and the plaintiff is entitled to have filed Suit 192 encompassing the various issues against various other parties and was not an improvement of the current case. As such, bearing in mind that there would be multiplicity, even if it was induced by the plaintiff, the plaintiff should be allowed to discontinue these proceedings to avoid such multiplicity.

[43] However, I had made it clear to the plaintiff that in furtherance of O. 21 r. 3 of the ROC 2012, I found it just that an order be made that such discontinuance shall be without liberty to file any similar application against the defendants herein pursuant to s. 346 of the Companies Act 2016.

[44] Finally, the defendants contend that they have had to spend considerable time defending these proceedings to date incurring time, money and energy. There is no dispute that such may be the case but that in my view is an issue that the court can compensate with an order of costs as O. 21 r. 3 of the ROC 2012 allows the court to discontinue proceedings as such terms as to costs.

[45] In this regard, learned counsel for the defendants had indicated at the hearing date that the defendants were seeking a sum of RM200,000 as costs if the court was minded to allow the discontinuance. In my view, bearing in mind that this was an originating summons based on affidavits as well as there had only been a half-day proceeding on 3 October 2023 when the plaintiff was cross-examined as well as there being no order of costs in favour

of the defendants in these proceedings so far, I was of the view that the sum of RM200,000 sought as costs was exorbitant to say the least and would be punitive.

[46] Having considered all matters, I was of the view that the sum of RM30,000 would be reasonable to be awarded as costs against the plaintiff.

Conclusion

[47] In the upshot, I made the following orders:

(i) in light of the filing of Suit 192, encl. 57 is allowed and the plaintiff be granted leave to discontinue these proceedings;

(ii) the plaintiff is not at liberty to file any similar proceedings against the defendants herein pursuant to s. 346 of the Companies Act 2016;

(iii) the defendants may utilise all evidence obtained in these proceedings, be it by affidavits or the plaintiff's oral testimony on 3 October 2023 in any other proceedings, including Suit 192; and

(iv) the plaintiff is to pay the defendants a sum of RM30,000 subject to allocator as costs of these proceedings.